



## Appeal of Cynthia Bias

ment constitute periodic payments which by statute are includible in the income of Appellant.

The applicable statute (Section 17104 of the Revenue and Taxation Code, as it read during 1951-1952) provides:

"In the case of a wife who is divorced or legally separated from her husband under a decree of divorce or of separate maintenance, periodic payments (whether or not made at regular intervals) received subsequent to such decree in discharge of, or attributable to property transferred (in trust or otherwise) in discharge of, a legal obligation which, because of the marital or family relationship, is imposed upon or incurred by such husband under such decree or under a written instrument incident to such divorce or separation shall be includible in the gross income of such wife. Such amounts received as are attributable to property so transferred shall not be includible in the gross income of such husband."

This provision is substantially the same as Section 22(k) of the Internal Revenue Code of 1939, which was before the court in Frank J. DuBane, 10 T.C. 992, upon which Appellant places her reliance. The facts in that case were, however, dissimilar to those with which we are concerned. There the husband asserted the terms of an oral agreement in derogation of the express terms of his subsequent written agreement to make the payments in question. The written agreement was made after the divorce was granted and the decree contained no provision for the payments. Furthermore, the agreement specifically stated that the payments were in consideration of conveyances to be made to the husband of property then standing in the name of the wife,

In the instant case the payments do not purport to be in discharge of an obligation of the husband arising from the purchase of specific property from Appellant. Nor is the attempt to characterize the payments as a transfer of additional property controlling. Floyd H. Brown, 16 T.C. 623; Thomas E. Hogg, 13 T.C. 361. Here the recognition of Appellant's rights to support and the provision for monthly payments until her death or remarriage, neither of which events is related to the value of the community property, leads to but one conclusion, the payments are in lieu of alimony and support. As such they are includible in Appellant's income, Brown et al, v. U. S., 121 Fed. Supp. 106.

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O R D E R

Pursuant to the views expressed in the Opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of ~~Mrs.~~ Cynthia Bias to proposed assessment of additional personal income tax in the amount of \$43.50 for the year 1951, be and the same is hereby sustained,

Done at Sacramento, California, this 12th day of June, 1957, by the State Board of Equalization.

Robert E. McDavid, Chairman

Paul R. Leake, Member

J. H. Quinn, Member

George R. Reilly, Member

Robert C. Kirkwood, Member

ATTEST: R. G. Hamlin, Acting  
Secretary